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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ROBERT BOULE,

10 Plaintiff,

11 v.

12 ERIK EGBERT, et. al.,

13 Defendants.

No. C-17-106-RSM

**STIPULATED PROTECTIVE ORDER
BETWEEN PARTIES, U.S. CUSTOMS
AND BORDER PROTECTION AND
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT**

14
15 Discovery in this action is likely to involve production of confidential, proprietary, or
16 private information for which special protection may be warranted. Specifically, Plaintiff and
17 Defendant seek discovery of records pertaining to individuals in a “system of records,” as
18 defined by the Privacy Act, 5 U.S.C. § 552a(a)(5) (the “Act”), disclosure of which would
19 potentially constitute a violation of criminal and civil law under section 552a(b) of the Act,
20 absent an Order from this Court pursuant to section 552(b)(11) of the Act. Furthermore, since
21 disclosure of such records for purposes other than this litigation could reasonably be expected
22 to constitute an unwarranted invasion of privacy, the parties and U.S. Customs and Border
23 Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”) hereby stipulate
24 to and respectfully request that this Court enter the following Stipulated Protective Order
25 restricting the use of such information for purposes of this litigation only.

26 1. PURPOSES AND LIMITATIONS

27 Discovery in this action is likely to involve production of confidential, proprietary, or
28 private information for which special protection may be warranted. Accordingly, the parties
and CBP and ICE hereby stipulate to and petition the court to enter the following Stipulated

1 Protective Order. The parties and CBP and ICE acknowledge that this agreement is consistent
2 with LCR 26(c). It does not confer blanket protection on all disclosures or responses to
3 discovery, the protection it affords from public disclosure and use extends only to the limited
4 information or items that are entitled to confidential treatment under the applicable legal
5 principles, and it does not presumptively entitle parties to file confidential information under
6 seal.

7 2. "CONFIDENTIAL" MATERIAL

8 "Confidential" material shall include the following documents and tangible things
9 produced or otherwise exchanged:

10 (a) internal CBP and ICE records including, but not limited to, personnel records,
11 medical records, law enforcement records, investigative records, legal records, disciplinary
12 records, and pay/benefits/leave records;

13 (b) records provided to CBP and ICE, or obtained by CBP and ICE, from other federal,
14 state, or local agencies or organizations;

15 (c) any information that the producing party is obligated by contract or state or federal
16 law to keep confidential;

17 (d) Plaintiff's medical records; Plaintiff's tax records;

18 (e) Agent Egbert's employment records, including job applications, performance
19 reviews, materials created during any internal-affairs investigation, and any disciplinary
20 records;

21 (f) Agent Egbert's insurance records, including insurance policies; communications
22 between the parties and the federal government; and any other document a party designates as
23 confidential.

24 Other than protection of Privacy Act protected information, nothing in this Order limits
25 in any way any other restrictions on the release of information, including restrictions on release
26 of classified or privileged information, required or permitted by law.

27 3. SCOPE

28 The protections conferred by this agreement cover not only confidential material (as
defined above), but also (1) any information copied or extracted from confidential material; (2)
all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,

1 conversations, or presentations by parties or their counsel that might reveal confidential
2 material.

3 However, the protections conferred by this agreement do not cover information that is
4 in the public domain or becomes part of the public domain through trial or otherwise.

5 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

6 4.1 Basic Principles. A receiving party may use confidential material that is
7 disclosed or produced by another party or by a non-party in connection with this case only for
8 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
9 disclosed only to the categories of persons and under the conditions described in this
10 agreement. Confidential material must be stored and maintained by a receiving party at a
11 location and in a secure manner that ensures that access is limited to the persons authorized
under this agreement.

12 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
13 ordered by the court or permitted in writing by the designating party, a receiving party may
14 disclose any confidential material only to:

15 (a) the receiving party's counsel of record in this action, as well as employees of
16 counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
19 agree that a particular document or material produced is for Attorney's Eyes Only and is so
designated;

20 (c) the other party in the litigation;

21 (d) experts and consultants to whom disclosure is reasonably necessary for this
22 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
A);

23 (e) the court, court personnel, and court reporters and their staff;

24 (f) copy or imaging services retained by counsel to assist in the duplication of
25 confidential material, provided that counsel for the party retaining the copy or imaging service
26 instructs the service not to disclose any confidential material to third parties and to immediately
27 return all originals and copies of any confidential material;

1 (g) during their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
3 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
4 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
5 material must be separately bound by the court reporter and may not be disclosed to anyone
6 except as permitted under this agreement;

7 (h) the author or recipient of a document containing the information or a custodian
8 or other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or
10 referencing such material in court filings, the filing party shall confer with the designating party
11 to determine whether the designating party will remove the confidential designation, whether
12 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
13 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
14 standards that will be applied when a party seeks permission from the court to file material
15 under seal.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
18 party or non-party that designates information or items for protection under this agreement
19 must take care to limit any such designation to specific material that qualifies under the
20 appropriate standards. The designating party must designate for protection only those parts of
21 material, documents, items, or oral or written communications that qualify, so that other
22 portions of the material, documents, items, or communications for which protection is not
23 warranted are not swept unjustifiably within the ambit of this agreement.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
26 unnecessarily encumber or delay the case development process or to impose unnecessary
27 expenses and burdens on other parties) expose the designating party to sanctions.

28 If it comes to a designating party’s attention that information or items that it designated
for protection do not qualify for protection, the designating party must promptly notify all other
parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, disclosure or discovery material that qualifies for protection under this agreement must
4 be clearly so designated before or when the material is disclosed or produced.

5 (a) Information in documentary form: (e.g., paper or electronic documents and
6 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
8 contains confidential material. If only a portion or portions of the material on a page qualifies
9 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
making appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
11 any participating non-parties must identify on the record, during the deposition or other pretrial
12 proceeding, all protected testimony, without prejudice to their right to so designate other
13 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
14 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
15 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
confidential information at trial, the issue should be addressed during the pre-trial conference.

16 (c) Other tangible items: the producing party must affix in a prominent place on the
17 exterior of the container or containers in which the information or item is stored the word
18 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
19 the producing party, to the extent practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the designating party’s
22 right to secure protection under this agreement for such material. Upon timely correction of a
23 designation, the receiving party must make reasonable efforts to ensure that the material is
treated in accordance with the provisions of this agreement.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
28 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding
5 confidential designations or for a protective order must include a certification, in the motion or
6 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
7 conference with other affected parties in an effort to resolve the dispute without court action.
8 The certification must list the date, manner, and participants to the conference. A good faith
9 effort to confer requires a face-to-face meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention, the designating party may file and serve a motion to retain confidentiality under
12 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
13 persuasion in any such motion shall be on the designating party. Frivolous challenges, and
14 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
15 burdens on other parties) may expose the challenging party to sanctions. All parties shall
16 continue to maintain the material in question as confidential until the court rules on the
17 challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
19 OTHER LITIGATION

20 If a party is served with a subpoena or a court order issued in other litigation that
21 compels disclosure of any information or items designated in this action as
22 “CONFIDENTIAL,” that party must:

- 23 (a) promptly notify the designating party in writing and include a copy of the
24 subpoena or court order;
25 (b) promptly notify in writing the party who caused the subpoena or order to issue
26 in the other litigation that some or all of the material covered by the subpoena or order is
27 subject to this agreement. Such notification shall include a copy of this agreement; and
28 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 confidential material to any person or in any circumstance not authorized under this agreement,
4 the receiving party must immediately (a) notify in writing the designating party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
6 protected material, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this agreement, and (d) request that such person or persons execute the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order or agreement that provides for production without prior privilege review. The parties
16 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party, including all copies, extracts
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
21 destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain confidential material.

26 The confidentiality obligations imposed by this agreement shall remain in effect until a
27 designating party agrees otherwise in writing or a court orders otherwise.
28

1 SO STIPULATED.
2 DATED this 5th day of March, 2018.

3 ANNETTE L. HAYES
4 United States Attorney

5 /s Kristin B. Johnson
6 KRISTIN B. JOHNSON WSBA #28189
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13 Attorney for U.S. Customs and Border Protection

14 SO STIPULATED.
15 DATED this 5th day of March, 2018.

16 /s Breean Beggs
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23 Attorney for Plaintiff Robert Boule

24 SO STIPULATED.
25 DATED this 5th day of March, 2018.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 6 day of March 2018.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

1 **EXHIBIT A**

2
3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty
6 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Western District of Washington in the
8 case of *Boule v. Egbert*, Case No. 17-106-RSM. I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to
10 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____